



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
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ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE

REFER TO FILE: **WR-4**

August 19, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2756

Dear Supervisors:

**PACOIMA AND LOPEZ SPREADING GROUNDS
APPROVE AGREEMENT TO SPREAD IMPORTED WATER
SUPERVISORIAL DISTRICT 3 AND 5
3 VOTES**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY
OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

Approve and instruct the Chairman to sign the enclosed agreement with the City of Burbank, which describes the terms and conditions for the construction and operation of an imported water outlet into Pacoima Wash for use in groundwater recharge at the Pacoima and Lopez Spreading Grounds located in the City of Los Angeles.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

We are recommending that your Board approve and instruct the Chairman to sign the enclosed agreement with the City of Burbank. The agreement describes the terms and conditions for the construction and operation of an imported water line connection for use in groundwater recharge at the Pacoima and Lopez Spreading Grounds located in the City of Los Angeles.

Groundwater is a significant source of the local water supply in the City of Burbank. In addition to storm runoff, imported water is also used for groundwater recharge. When available, the City of Burbank desires to spread imported water in the Pacoima and Lopez Spreading Grounds for additional recharge of the local groundwater basin. The connection will be an extension of an existing water line owned by the Metropolitan Water District to Pacoima Wash.

We operate numerous spreading grounds, including the Pacoima and Lopez Spreading Grounds, the primary purpose of which is the conservation of storm runoff. At times when storm runoff is not available, we have made our spreading grounds available for the spreading of imported water.

Implementation of Strategic Plan Goals

These actions meet the County Strategic Plan Goal of Service Excellence as the ensuing project will increase the reliability of the local groundwater basin to better meet local water supply needs.

FISCAL IMPACT/FINANCING

There will be no impact to the County's General Fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The enclosed agreement has been approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The City of Burbank has previously filed a Notice of Exemption in compliance with the California Environmental Quality Act on August 8, 2003. No other environmental documentation is required for this project.

CONTRACTING PROCESS

Not applicable.

The Honorable Board of Supervisors
August 19, 2004
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IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact to current County services or projects as a result of this project. The City of Burbank is responsible for the construction, operation, and maintenance of the water connection.

CONCLUSION

We are enclosing three originals of this agreement. Please return two fully executed originals along with an adopted copy of this letter to Public Works and retain one original for your files.

Respectfully submitted,

DONALD L. WOLFE
Interim Director of Public Works

GH:jac
P:\WRD\Ops\Users\KAZ\blpacoima.doc

Enc.

cc: Chief Administrative Office
County Counsel

**AGREEMENT
TO
SPREAD IMPORTED WATER
AT THE
PACOIMA AND LOPEZ SPREADING GROUNDS**

This Agreement is made, entered into, and executed as of this _____ day of _____, **2004**, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, **a body corporate and politic** (hereinafter referred to as "DISTRICT") and CITY OF BURBANK, a municipal corporation (hereinafter referred to as "BURBANK").

RECITALS

WHEREAS, the DISTRICT is a self-governing special district organized and operating under the provisions of the Los Angeles County Flood Control Act, Water Code Uncodified Acts, Act 4463 (hereinafter referred to as "the Act"); and

WHEREAS, BURBANK is a municipal corporation, duly created, organized and existing under the laws of the State of California (see Cal, Const. Article XI, Sec. 5) and its City Charter duly adopted at a special municipal election held on January 4, 1927.; and

WHEREAS, the DISTRICT owns and operates the PACOIMA AND LOPEZ SPREADING GROUNDS, (hereinafter referred to as "SPREADING GROUNDS"), for the purpose of replenishing the groundwater located in the San Fernando Basin located within the County of Los Angeles, State of California; and

WHEREAS, the Act authorizes the DISTRICT to conserve waters by spreading, storing, retaining, or causing them to percolate into the soil, thereby recharging subsurface water storage within groundwater basins in the County of Los Angeles; and

WHEREAS, Section 17 of the Act authorizes the DISTRICT to cooperate with entities such as BURBANK to conserve waters, including waters that have been imported from outside the DISTRICT; and

WHEREAS, the DISTRICT periodically spreads storm water runoff and water collected from local rainfall at its discretion (hereinafter referred to as "TRIBUTARY WATER") at the SPREADING GROUNDS and gives the highest priority to such replenishment activities; and

WHEREAS, after the DISTRICT has first given full consideration and priority to the spreading of TRIBUTARY WATER, there may be unused capacity ("Unused Capacity") in DISTRICT facilities from time to time; and

WHEREAS, BURBANK proposes to deliver supplemental water other than TRIBUTARY WATER that BURBANK will import from the State Water Project (hereinafter referred to as "IMPORTED WATER"), through certain imported water facilities (hereinafter referred to as "REPLENISHMENT CONNECTION") to the Pacoima Wash for diversion into the SPREADING GROUNDS; and

WHEREAS, the DISTRICT and BURBANK recognize benefits to BURBANK associated with the periodic spreading of IMPORTED WATER at the SPREADING GROUNDS; and

WHEREAS, BURBANK requests the DISTRICT to make available such Unused Capacity for the spreading of IMPORTED WATER.

WHEREAS, the purpose of this Agreement is to establish the terms and conditions under which the DISTRICT will spread, or cause to be spread, IMPORTED WATER at the SPREADING GROUNDS for the benefit of BURBANK.

COVENANTS

NOW, THEREFORE, it is agreed by and between DISTRICT and BURBANK as follows:

SECTION 1. OBLIGATIONS OF THE DISTRICT.

(a) **Grant of Right to Construct and Maintain Facilities.** DISTRICT grants to BURBANK rights to, design, construct, operate, maintain, and repair a REPLENISHMENT CONNECTION, acceptable to the DISTRICT, to be used to deliver IMPORTED WATER to DISTRICT's facilities for groundwater replenishment purposes. The REPLENISHMENT CONNECTION shall be located in that certain area described in the attached Exhibit "A" (the "REPLENISHMENT CONNECTION AREA"), and includes but is not necessarily limited to, the pipes, valves, concrete diversion structures and other appurtenances extending from the Metropolitan Water District (MWD) East San Fernando tunnel right-of-way through the west side of the DISTRICT right-of-way to the west wall of the Pacoima Wash, as described in the plans and specifications attached hereto as Exhibit "B." ("PLANS and SPECIFICATIONS"). Notwithstanding the foregoing, any construction, operation, and maintenance of the REPLENISHMENT CONNECTION shall be conditional upon BURBANK applying for and obtaining a construction permit ("Permit") by the Los Angeles County Department of Public Works. The terms and separate conditions of the Permit shall be in addition to, not in lieu of, the provisions of this Agreement. Any review and/or approval by the District of the activities of BURBANK shall not relieve BURBANK of its obligations in this Section 2(a) below or its obligations to provide indemnification as set forth in Section 3 below.

(b) **No Obligation to Construct or Maintain Facilities.** Nothing in this Agreement shall be construed as obligating DISTRICT to: (i) construct, operate or maintain any new or existing facilities; (ii) spend funds to operate or maintain any facilities in conjunction with the spreading of IMPORTED WATER; or (iii) perform any act not explicitly and specifically required of the DISTRICT in this Agreement.

(c) Accepting IMPORTED WATER. Upon receipt of a Written Request (as defined below), to the extent that the District may determine that Unused Capacity exists at the Spreading Area in accordance with Section 1(d), the DISTRICT shall accept and spread IMPORTED WATER caused to be delivered by BURBANK from its REPLENISHMENT CONNECTION in accordance with the following conditions:

i. Provided that BURBANK delivers a Written Request pursuant to Section 2(c) with advance notice of a request for water to be spread, the DISTRICT either will allow, disallow, or restrict the spreading of IMPORTED WATER at the SPREADING GROUNDS. The DISTRICT shall have sole and absolute discretion to determine the flow rates and the duration of delivery and spreading of IMPORTED WATER, based upon conditions existing at or following the date the DISTRICT receives the Written Request, including, without limitation, the Unused Capacity available in the SPREADING GROUNDS and/or any emergency or condition beyond the DISTRICT's control.

ii. Notwithstanding any provision in this Agreement, the DISTRICT shall have full and absolute discretion to give priority to the spreading of TRIBUTARY WATER before considering IMPORTED WATER. In accordance with the DISTRICT's obligation to give first priority to the spreading of TRIBUTARY WATER when water flow to the SPREADING GROUNDS consists of both TRIBUTARY WATER and IMPORTED WATER, then any water bypassing the SPREADING GROUNDS under such conditions (but not more than the total of IMPORTED WATER at such time) will be considered to be IMPORTED WATER.

iii. Notwithstanding any other provision of this Agreement, the DISTRICT shall have full power and authority, at its sole and absolute discretion, to withdraw, modify, or revoke any permission granted in response to any Written Request when, in the DISTRICT'S sole opinion, the spreading contemplated by the Written Request in whole or in part, cannot or should not be performed due to the District's operational and/or maintenance concerns, problems or difficulties. The DISTRICT shall make a good faith effort to provide BURBANK at least 24 hour's telephonic notice of such changes.

iv. The DISTRICT reserves the right to prohibit or to terminate the spreading of IMPORTED WATER at any time, without prior notice, in connection with any emergency that may exist or as a result of the need to perform and/or accomplish the District's mandates of flood control or water conservation, including, without limitation, the spreading of TRIBUTARY WATER, as the DISTRICT may determine in the DISTRICT'S sole and absolute discretion.

(d) DISTRICT'S Determination of Unused Capacity in SPREADING GROUNDS. Notwithstanding any other provision in this Agreement, the DISTRICT shall have sole and absolute discretion to determine any Unused Capacity in the SPREADING GROUNDS based solely on the DISTRICT'S assessment of its operational requirements, including without regard to this Agreement, and subject to the DISTRICT'S determination, at its sole discretion, of the need for the DISTRICT to conduct other spreading prior to any spreading of IMPORTED WATER at the SPREADING GROUNDS.

(e) Ownership of Imported Water. The DISTRICT acknowledges that any water conveyed by BURBANK through the REPLENISHMENT CONNECTION for spreading at the SPREADING GROUNDS is for the benefit of BURBANK and the DISTRICT makes no claim of water rights to, nor ownership of, the IMPORTED WATER. Notwithstanding the foregoing, the DISTRICT shall not be held liable (and shall be released, held harmless and indemnified pursuant to SECTION 3(iii) below) in connection with any IMPORTED WATER that may bypass the SPREADING GROUNDS.

(f) Records of DISTRICT. Following a reasonable period after receipt of any written request by BURBANK, the DISTRICT shall make available to BURBANK the DISTRICT'S existing records of the quantities of IMPORTED WATER spread in the SPREADING GROUNDS and any estimate of the quantities of IMPORTED WATER delivered to the DISTRICT that may have bypassed the SPREADING GROUNDS.

SECTION 2. OBLIGATIONS OF BURBANK.

(a) Construction based on PLANS and SPECIFICATIONS. BURBANK shall be solely responsible for the design and construction of the REPLENISHMENT CONNECTION, at its sole cost and expense, based on industry standards and pursuant to the PLANS and SPECIFICATIONS. Notwithstanding the foregoing, any review and approval of any plans and specifications by the DISTRICT or the issuance of a permit shall not relieve BURBANK from its responsibilities relating to design or construction of the REPLENISHMENT CONNECTION or from its obligations under this Agreement, including pursuant to SECTION 3 below.

(b) Operation and Maintenance. At its sole cost and expense BURBANK shall be solely responsible to upkeep, maintain and keep fully operational, to the DISTRICT's satisfaction, all existing and future appurtenances, equipment, and pipelines associated with the delivery of IMPORTED WATER to the SPREADING GROUNDS, including the REPLENISHMENT CONNECTION. At its sole cost and expense, BURBANK will install and maintain flow metering devices acceptable to the DISTRICT at the MWD meter Vault for the delivery of IMPORTED WATER to the SPREADING GROUNDS.

(c) Written Requests to DISTRICT. BURBANK must deliver to the DISTRICT written requests (the "Written Request") to spread IMPORTED WATER at the SPREADING GROUNDS. The Written Request must specify the desired flow rate and the total acre-feet of IMPORTED WATER to be delivered to the SPREADING GROUNDS and the time frame during which BURBANK desires the IMPORTED WATER to be spread. Flow rates shall not exceed a maximum of fifty (50) cubic feet per second. BURBANK must deliver any said Written Request to the DISTRICT a minimum of two (2) business days prior to the date of delivery of the IMPORTED WATER. If changes to the Written Request are necessary by BURBANK, BURBANK will give the DISTRICT at least 24 hours telephonic notice of such changes.

(d) Documenting Delivery of IMPORTED WATER. BURBANK shall record daily readings of the flow rate in cubic feet per second and the total acre-feet of any and all IMPORTED WATER discharged from the REPLENISHMENT CONNECTION into the SPREADING

GROUND. BURBANK shall deliver to the DISTRICT on a weekly basis, at BURBANK'S sole cost and expense, copies of those records within seven (7) calendar days of the end of any given week.

(e) BURBANK shall be responsible for obtaining and maintaining valid at all times all permits ("Permits") from all governmental agencies and easements or rights from third parties as may be necessary to perform all acts contemplated under this Agreement, including the construction and operation of the REPLENISHMENT CONNECTION and the importing and/or spreading of IMPORTED WATER. Nothing in this Agreement shall be construed as a waiver of the requirement to obtain any needed Permit, including, without limitation, from the County of Los Angeles or, if applicable, from the State of California or any of its agencies.

(f) Damage to DISTRICT's Facilities. BURBANK shall be responsible for and shall fully compensate and reimburse the DISTRICT immediately upon request in connection with any damage to the DISTRICT's property or facilities caused directly or indirectly by the REPLENISHMENT CONNECTION or any water flowing therefrom.

SECTION 3. INDEMNIFICATION.

BURBANK Indemnity of DISTRICT. BURBANK agrees to release, indemnify, defend, and save harmless the DISTRICT, the County of Los Angeles, its special districts, and their Supervisors, agents and employees (collectively, "Indemnified Parties" or singularly, "Indemnified Party") from and against all claims, damages (including, without limitation special and consequential damages), injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal and administrative proceedings, interest, fines or increases in fines, charges, penalties and expenses (including without limitation reasonable attorneys', engineers', consultants' and expert witness fees and costs incurred in defending against any of the foregoing or in enforcing this Agreement) of any kind whatsoever (collectively, "Claims"), paid, incurred or suffered by any Indemnified Party or asserted against any Indemnified Party, directly or indirectly arising from or attributable to (i) the IMPORTED WATER; (ii) the design, construction, maintenance, and operation of the REPLENISHMENT CONNECTION; (iii) any condition in or beyond the SPREADING GROUNDS caused by the IMPORTED WATER or BURBANK's activities relating thereto, in whole or in part; and (iv) Claims relating to any Permit, including, without limitation, relating to any violation of any Permit or the failure to obtain any Permit. The foregoing is intended as a broad indemnity that includes, without limitation: 1) Claims relating to changes in water quality or changes relating to the water levels within the groundwater basin; and 2) Claims pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S. C. Section 9607 *et seq.*) ("CERCLA"), and under Chapter 6.5 of Division 20 of the California Health and Safety Code (commencing with Section 25100). Notwithstanding the foregoing, BURBANK shall not be obligated to indemnify, defend, and save harmless any Indemnified Party from liability caused exclusively by the negligent acts or willful misconduct of the DISTRICT, its agents, officers, employees, directors, representatives, or consultants.

SECTION 4. TERM. This Agreement shall continue in effect until terminated by either party as may be set forth elsewhere in this Agreement, or upon the giving to the other a prior ninety (90) calendar days written notice, or at the option of any one party upon a material breach of this Agreement by the other party. This remedy shall be in addition to and not in place of any other

remedy available to the parties in law and equity. Upon termination or cancellation of this Agreement, BURBANK shall remove all REPLENISHMENT CONNECTION facilities, at BURBANK'S sole cost and expense, and shall restore the Pacoima Wash to its original condition to the reasonable satisfaction of the DISTRICT within 180 days of the date of termination or cancellation.

SECTION 5. NOTICES. Unless otherwise provided in this Agreement, any Written Request, notice, demand or document from one party to the other under this Agreement shall be delivered in writing via First Class U.S. Mail or overnight courier (U.S. Mail Express Mail overnight delivery, Federal Express or an equivalent service, overnight delivery), or via telefacsimile (with written confirmation as proof of delivery), or delivered in person as follows:

If to DISTRICT: Los Angeles County Department of Public Works
Water Resources Division
Attn: Engineer in Charge of Spreading Operations
900 South Fremont Avenue
Alhambra, CA 91803
Tel.: (626) 458-6307
Fax: (626) 979-5309

If to BURBANK: Burbank Water and Power
Attn: Assistant General Manager, Water Systems
164 W. Magnolia Blvd.
Burbank, CA 91502
Tel.: (818) 238-3500
Fax: (818) 238-3508

SECTION 6. MUTUAL COVENANTS.

a. **Governing Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

b. **Amendment.** No variation, modification, change, or amendment of this Agreement shall be binding upon either party unless such variation, modification, change, or amendment is in writing and duly authorized and executed by the Los Angeles County Board of Supervisors and BURBANK. This Agreement shall not be amended or modified by oral agreements or understandings between the parties or by any acts or conduct of the parties.

c. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings.

d. **No Third Party Beneficiary / Successors and Assigns.** This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provisions of this Agreement.

e. Waiver. No waiver of any breach or default by either party shall constitute a waiver of any other breach or default, nor shall any such waiver constitute a continuing waiver.

f. Severability. If any provision of this Agreement shall be determined by any court to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be affected and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this Agreement.

g. Counterparts. This Agreement may be executed simultaneously or in any number of counterparts, each of which together shall constitute one and the same instrument.

h. Interpretation. Both parties have been represented by counsel in the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed according to its fair language and any ambiguities shall not be resolved against the drafting party.

i. Assignment. Neither party shall assign this Agreement or any of such party's interest, rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld except that either party may assign the Agreement, or any part thereof, to any successor governmental agency legally performing the functions of the assigning party as its successor.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective and duly authorized officers on the day and year above first written.

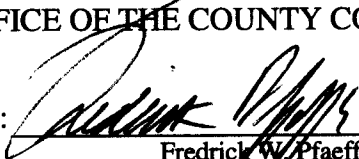
LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT

By: _____
Chair, Board of Supervisors


ATTEST:

By: _____
Executive Officer
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By:  _____
Fredrick W. Pfaeffle
Senior Deputy County Counsel

CITY OF BURBANK, BURBANK
WATER AND POWER

By:  _____
Ronald E. Davis
General Manager

APPROVED AS TO FORM:
Dennis A. Barlow, City Attorney


By:  _____
Richard J. Morillo
Senior Assistant City Attorney

EXHIBIT A

File with: PACOIMA WASH 183

Affects: Parcel 218

21-RW 3.1

A.P.N. 2525-014-906 (portion)

T.G. 482(E5)

I.M. 219-157

Third District

M0524002

LEGAL DESCRIPTION

(Easement for water pipeline purposes)

That portion of that part of Lot 4, Section 36, Township 3 North, Range 15 West, S.B.M., and those portions of that unnumbered Block in The Maclay Rancho Ex Mission of San Fernando, as shown on map recorded in Book 37, pages 5 to 16, inclusive, of Miscellaneous Records, in the office of the Recorder of the County of Los Angeles, described as PARCEL 183 in a Final Judgment, had in Superior Court Case No. 610931, a certified copy of which is recorded in Book 41716, page 405, of Official Records, in the office of said Recorder, and described in that certain 15-foot strip of land in deed to the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, recorded in Book 50166, page 402, of said Official Records, within the following described boundaries:

Commencing at the intersection of the center line of Maclay Street (formerly Maclay Avenue), 73 feet wide, and the center line of Fenton Avenue (formerly Eleventh Street), 60 feet wide, as both said center lines are shown on map of Tract No. 26569, recorded in Book 685, page 41 to 44, inclusive, of Maps, in the office of said Recorder; thence South 41°20'22" East along said center line of Fenton Avenue, a distance of 1189.38 feet to the northeasterly line of above mentioned PARCEL 183; thence North 65°42'16" East along said northeasterly line, a distance of 285.05 feet to a point on a non-tangent curve concave to the northwest and having a radius of 701.85 feet, a radial of said curve to said point bears South 28°19'07" East; thence northeasterly along said curve through a central angle of 11°11'41", an arc distance of 137.13 feet to the TRUE POINT OF BEGINNING; thence South 39°30'48" East 25.00 feet to a curve concentric with and 25.00 feet southeasterly, measured radially, from said non-tangent curve; thence northeasterly along said concentric curve through a central angle of 4°13'53", an arc distance of 53.68 feet; thence North 43°44'41" West 40.00 feet to a point on the curved northwesterly line of said certain 15-foot strip of land; thence southwesterly along said curved northwesterly line through a central angle of 4°13'53", an arc distance of 50.73 feet; thence South 39°30'48" East 15.00 feet to the TRUE POINT OF BEGINNING.

Containing: 2,088 ± square feet

